

DUNCAN M. JAMES  
DONALD J. McMULLEN  
CHRISTOPHER L. BROOKE  
K. J. FLAVETTA  
DOUGLAS L. LOSAK  
GINEVRA K. CHANDLER

**LAW OFFICE OF DUNCAN M. JAMES**

LAMBS INN  
P. O. BOX 1381  
445 NORTH STATE STREET  
UKIAH, CALIFORNIA 95482  
(707) 468-9271

FAX (707) 468-0453  
lawoffice@duncanjames.com

October 21, 2016

David J. Rapport  
City of Ukiah Attorney  
405 W. Perkins Street  
Ukiah, CA 95482

*Hand Delivered*

Re: *Ukiah Valley Sanitation District v. City of Ukiah*  
Sonoma County Superior Court, case number SCV 256737

Dear Dave:

There is apparently some belief that the District is newly suggesting that the proposed settlement negotiations involving the parties' respective committees and counsel be privileged and confidential. On the contrary, as you know, such a process is a fundamental aspect of any such negotiation. We have never suggested that such negotiations occur in any other form. We have discussed these very points with you directly in communicating about the anticipated settlement discussions. In my view, it makes little, if any, sense to negotiate a resolution in any other environment. It just wouldn't be productive.

As you well know, privileged or confidential negotiations (whether termed mediation or otherwise) are designed to assist effective communication between the parties in working to resolve their disputes with one another. It is particularly appropriate in situations where parties desire or need to continue their relationship after resolving their conflict. It is apparent here that the parties have been unable to effectively communicate and that they will be required to work together after this conflict is resolved, one way or the other. Further, the informality of a privileged negotiation or mediation process allows for a relatively open, unstructured meeting or series of meetings.

It is clear that resolving the parties' disputes will take numerous days, even weeks or more. The issues are not simple. As you know, privileged and confidential settlement communications creates and preserves security for the parties during their settlement negotiations. Indeed, the confidential nature of the process encourages mutual disclosure of private information (e.g. work product) and opinion in order to generate the possibility of settlement. It reassures parties that there will be no damage done to their position in litigation by what they do or say during the process. The idea is to openly and creatively explore alternatives

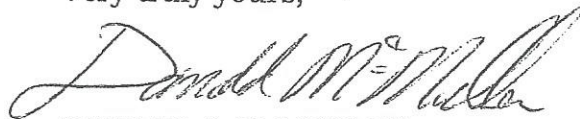
David J. Rapport  
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and positions--and in fact to be concessionary-- without fear of reprisal. Privileged and confidential negotiations fosters those objectives.

In short, to proceed with the settlement negotiations we hope will be undertaken next week, it is necessary to have an executed agreement in place to ensure the process proceeds in the appropriate manner. A draft agreement is enclosed. Let me know if you desire any modification.

Alternatively, if the City refuses to make an effort to resolve the litigation with these customary procedures in place, the possibility of mediation before a neutral third party mediator, now that the matter has progressed, should be revisited. We would gladly discuss that option as an alternative if the City chooses to not move forward with the proposed settlement negotiations.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Donald J. McMullen".

DONALD J. McMULLEN

DJM/kab

cc: client by email

## CONFIDENTIALITY AGREEMENT

(Settlement Discussions and Conferences of *Ukiah Valley Sanitation District v. City of Ukiah*, Mendocino County Superior Court case no. SCUJ-CVC-13-63024 and related matters)

In order to promote and foster open communication, dialogue, and information/materials exchange among the parties, Ukiah Valley Sanitation District and City of Ukiah, and to facilitate resolution of their dispute, including the referenced action and matters, the parties agree to confidential settlement discussions and conferences ("mediation") as provided by law and this Confidentiality Agreement ("Agreement").

1. This mediation process is and shall be considered settlement negotiations for the purpose of all state and federal rules protecting disclosures made during such process from later discovery and/or use in evidence. The parties and mediation participants agree that all disclosures (including, without limitation, communications, facts, arguments, offers, evidence, statements, documents, information, materials, and any other event occurring) made, disclosed, or exchanged during or as part of mediation shall be privileged, confidential, and protected from later disclosure, discovery, or use in evidence by the receiving party (collectively "Confidential Information"). Disclosure of Confidential Information is strictly prohibited.

2. The parties' sole purpose in conducting or participating in mediation is to compromise, settle, or resolve their dispute, in whole or in part.

3. Among other law, the provisions of *Evidence Code* §§ 1115 *et al.* and 1150 *et al.* apply to this mediation. THIS AGREEMENT EXTENDS TO ALL PRESENT AND FUTURE CIVIL, JUDICIAL, QUASI-JUDICIAL, ARBITRAL, ADMINISTRATIVE OR OTHER PROCEEDINGS concerning the mediated matters. The parties have agreed to conduct mediation by way of participation from a committee comprised of two board/council members for the parties, respectively, along with assistance from managers and legal counsel. The parties acknowledge that each is a governmental entity overseen by a Board or Council and that, in order to enter a settlement agreement(s) during mediation, it will require decision by each party's governing body as a whole. Therefore, to the extent it may be necessary for the parties or mediation participants to disclose Confidential Information subject to this Agreement to the whole of their governing body, the parties and participants agree, represent, and warrant that it shall only be done in a closed executive session, held pursuant to *Government Code* § 54956.9 or otherwise, to other members of the parties' Board or Council, as the case may be, and shall thereupon retain its privileged and confidential nature as provided by law and this Agreement.

4. The privileged and confidential character of Confidential Information is not altered by disclosure during the mediation. The mediation process may continue after the date appearing below. Therefore, any subsequent disclosures of Confidential Information between the parties in a continuing effort to resolve the dispute are subject to this Agreement. Accordingly, the parties waive the automatic termination provisions of *Evidence Code* §1125(a)(5).

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5. This Agreement must be signed by all parties and mediation participants, including members, staff, and attorneys, prior to participating in mediation. In the event a participant fails to sign this Agreement, it shall not in any manner whatsoever operate to waive or alter the privileged, confidential, and protected nature of the Confidential Information made or exchanged during mediation; each party warrants and represents that all participants are representatives of their respective entities and, as such, shall be and are hereby bound by the provisions of this Agreement notwithstanding the lack of any individual participant's execution of this Agreement.

6. ANY WRITTEN SETTLEMENT AGREEMENT PREPARED DURING OR AT THE CONCLUSION OF THE MEDIATION IS SUBJECT TO DISCLOSURE, and is BINDING, ENFORCEABLE, AND ADMISSIBLE to prove the existence of and/or to enforce the agreement under *Code of Civil Procedure* § 664.6, if applicable, or otherwise.

7. Because the parties are disclosing Confidential Information in reliance on this Agreement, any breach of this Agreement would cause irreparable injury for which monetary damages would be inadequate. Consequently, any party to this Agreement may obtain an injunction or sanction to prevent disclosure of any Confidential Information in violation of this Agreement.

8. Each party is represented by legal counsel, and is not relying on the representations, statements, or legal opinion of opposing counsel. If any settlement agreement is prepared, each party is advised to have the agreement independently reviewed by their own counsel before executing the agreement.

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**UKIAH VALLEY SANITATION DISTRICT**

Dated: October \_\_\_\_, 2016

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James Ronco, Chair  
Ukiah Valley Sanitation District Board

Dated: October \_\_\_\_, 2016

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Robert Page  
Ukiah Valley Sanitation District Board Member

LAW OFFICE OF DUNCAN

Dated: October \_\_\_\_, 2016

\_\_\_\_\_  
By: DUNCAN M. JAMES, Attorney for Plaintiff  
UKIAH VALLEY SANITATION DISTRICT

CITY OF UKIAH

Dated: October \_\_\_, 2016

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Stephen G. Scalmanini  
City of Ukiah Council Member/Mayor

Dated: October \_\_\_, 2016

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Kevin Doble  
City of Ukiah Council Member

RAPPORT AND MARSTON

Dated: October \_\_\_, 2016

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By: DAVID RAPPORT, City Attorney  
City of Ukiah

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**OTHER PARTICIPANTS**

*Other participants should date, print their name and affiliation, and sign where indicated*

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Affiliation:

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